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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,562	07/30/2003	Scott Smith	760-12 DIV/CON/RCE	8643
23869 7590 02/18/2009 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
GANESAN, SUBA				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/630,562
Filing Date: July 30, 2003
Appellant(s): SMITH, SCOTT

John S. Sopko
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/9/2009 appealing from the Office action mailed 7/9/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,352,561	LEOPOLD ET AL	3-2002
6,165,210	LAU ET AL	12-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 3, 6-8, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leopold et al. (U.S. Pat. No.: 6,352,561) in view of Lau et al. (U.S. Pat. No.: 6,165,210).
2. Leopold discloses a stent graft composite device formed from a flat preformed planar strip and stent assembly (see fig. 3) comprising an elongate preformed non-textile planar strip 128 of polymeric graft material (col. 11 lines 13-44) having a first exterior surface and a second opposed luminal surface (see fig. 3). A stent 126 is attached to the luminal surface of the strip, and the strip assembly is helically wound into a continuous tubular structure (col. 9 lines 25-27). Leopold further discloses an embodiment in which successive helical windings do not overlap (fig. 6B). The polymeric graft material includes fluoropolymers and ePTFE (col. 11 lines 13-44). The tubular structure has a generally circular cross section (see fig. 3 and 4A). The stent comprises stent wire (see fig. 3).
3. However, the stent graft assembly of Leopold lacks a planar stent made of planar wire or ribbon. Lau teaches a planar stent, which the examiner considers to be equivalent to a planar ribbon stent (figs. 6,7,9,10). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include a planar stent, as taught by Lau, with the stent-graft composite of Leopold, the motivation to combine being: providing a stent with a greater surface area to promote attachment to the helically wound graft material.

4. Examiner considers such a modification to be within the skill of an ordinary worker in the art, since in addition to the motivation provided above, the resulting stent-graft composite of Leopold and Lau would constitute a combination of prior art elements, combinable using known methods and yielding predictable results.

(10) Response to Argument

1. Appellant argues that Leopold fails to suggest an elongate preformed non-textile planar strip of polymeric graft material, a planar stent attached to the planar graft material to form a flat strip assembly, which is subsequently wound to form the inventive stent graft. Examiner disagrees. Leopold discloses a flat planar strip and stent assembly with a planar non-textile graft. The limitation "subsequently wound to form the inventive stent graft" is a product by process limitation, which is not limited to the manipulations of the recited steps, only the structure implied by the steps (see MPEP 2113). Since the structure of Leopold matches the structure of the claimed invention (in combination with Lau), the rejection is proper. Lau teaches the use of planar stents. The limitation "formed from a flat sheet" is considered to be a product by process limitation; since the planar stent of Lau has the exact structure, it meets the claim.

2. Appellant argues that the combination of Leopold and Lau lacks a flat stent assembly, because the components of the Leopold and Lau prostheses are individually formed. This is not persuasive. The prosthetic of Leopold is a stent assembly with a rounded stent. Lau teaches the use of a planar stent, which would have been an obvious substitution for the purpose of providing a greater surface area stent. Therefore the combination of Leopold and Lau includes a flat stent assembly.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Suba Ganesan/

Examiner, Art Unit 3774

Conferees:

/DAVID ISABELLA/

Supervisory Patent Examiner, Art Unit 3774

/Thomas C. Barrett/

TQAS TC 3700